

MEMORANDUM OF LAW

DATE: February 7, 1990

TO: John Lockwood, City Manager

FROM: City Attorney

SUBJECT: New Federal Restrictions on Lobbying/31 U.S.C.
Section 1352

In a meeting on January 25, 1990 in your office, you asked Ted Bromfield, Chief Deputy City Attorney, and me to review new Federal restrictions on lobbying with federal monies. The new law is located in 31 U.S.C. section 1352 (P.L. 101-121 section 319), and was adopted on October 30, 1989. (Copy of statute attached.)

The Office of Management and Budget (OMB) issued regulations implementing this statute on December 20, 1989 (regulations entitled "Government Guidance for New Restrictions on Lobbying: Interim Final Guidance"). 54 Fed. Reg. 52305 et seq. (Copy of OMB Regulations attached.) According to Cynthia Schwimer of the Department of Justice, these OMB Regulations supersede the instructions you received in memorandum form from the Department of Justice, Office of Justice Programs, dated December 20, 1989, and sent on to us to review.

Please note that the regulations contain copies of "certification" and "disclosure" forms that will have to be filed by the City and its subrecipients of federal monies (see Appendix A and B). Appendix C of the regulations contains new contract language for contracts involving federal monies.

Also, the OMB states that final regulations signed by affected federal agency heads will be published in the Federal Register within ninety (90) days of publication of this Interim Regulation. The final rule may change slightly what is said here.

Although the OMB Regulation is clear on its face, I take this opportunity to highlight some features of the statute and regulations below:

What Does the Law Do?

1. The legislation prohibits any "recipient" of federal grants, loans, contract monies or cooperative agreement monies (hereafter "federal monies") to use any portion of that money to lobby Congress or federal agencies. Section 1352(a).¹

The law does not place restrictions on using these federal monies for lobbying state or local agencies or governments. It

only prohibits using federal monies to lobby officers or employees of federal agencies and officers, members or employees of Congress. (Section 1352(a)(1).) In other words, persons who are seeking federal grant monies funneled through the City may appear before the City's Public Services and Safety Committee, for example, and "lobby" for those monies.

The law excludes certain activities from the definition of "lobbying." Reasonable compensation paid to a consultant for technical assistance in preparing a bid for a federal grant or contract is not "lobbying." Section 1352(e)(1)(B). Also, mere writing of grant applications is not considered "lobbying." Section 1352(e)(1)(B).

Also, payment of salaries to City officers or employees engaged in agency and legislative liaison activities not related to obtaining a federal contract, grant, loan, or cooperative agreement, is not a prohibited use of federal monies. Section 1352(e)(1)(A).

2. The legislation also requires recipients, subrecipients, or applicants for federal funds to disclose amounts of non-federal money, if any, used to lobby the federal government. Section 1352(b).

Who is the "Recipient?"

Any person, including a local government, who receives federal monies and subrecipients of federal monies are covered by the law. (Section 1352(b)(1)(5); (h)(1)(A)). Therefore, the City of San Diego is a recipient of federal monies within the meaning of the law. Also, the City's grantees, for example,

1 All references to federal legislation in this memorandum of law shall refer to 31 U.S.Code section 1352 unless otherwise specified.

recipients of CDBG monies, would be required to comply with the new law. Also, applicants for federal funds, not just recipients, must also comply with the law. Section 1352(b)(1).

Are There Threshold Money Limits?

The disclosure requirements do not apply to applicants, recipients or subrecipients of less than \$100,000 (if contract grant or cooperative monies are involved), or less than \$150,000 (if federal loan monies are involved). Section 1352 (e)(2). The prohibition against using federal monies to lobby the federal government applies no matter what amount the recipient or subrecipient receives in federal monies.

What Must Be Filed (Certification and Disclosure Requirements)?

Applicants, recipients and subrecipients have to file a

certification form (see Appendix A to OMB Regulation) certifying that federal monies have not been used to lobby the federal government.

They may also have to file a disclosure form (see Appendix B to OMB Regulation) disclosing the amounts of non-federal monies, if any, used to lobby the federal government. The City will have to file a disclosure form since it pays a lobbyist in Washington.

Where Should Disclosure Forms Be Filed?

The City as recipient should file its forms with each federal agency which is granting them money. Section 1352(b)(1). Each subrecipient of federal monies from programs the City administers should file their forms first with the City department that administers the funds. The City department should collect the forms and send them to the appropriate federal agency. Section 1352(b)(5).

When Should Disclosure of Certification Forms be Filed?

Each person, including the City and its subrecipients, must file a disclosure form at the end of each calendar quarter (March 31, June 30, October 31, December 31) in which there occurs an event that requires disclosure. OMB Regulation, Subpart A, section .110. (54 Fed. Reg. 52313, December 20, 1989).

The first disclosure forms must be filed no later than March 31, 1990, and should cover the period from December 23, 1989, through March 31, 1990.

The certification forms should be filed with each submission that initiates federal agency consideration for awards of federal contracts, grants, loans or cooperative agreements that exceed the threshold money amounts. OMB Regulation, Subpart A, section .100 (54 Fed. Reg. 52313, December 20, 1989).

Who Should Sign the Forms?

Since the City receives federal monies for several programs potentially from several federal agencies (i.e., CDBG block grant funds from the Department of Housing and Urban Development and arts grants from National Endowment for the Arts), we recommend that each department head prepare and sign the forms for the City, since the department head should be the most familiar with how the monies are being used each year. However, the law does not specify who in the City should be the one to sign the forms.

We also recommend that someone with authority for subrecipients sign the forms before forwarding them to the City for collection.

If you have questions after reading the statute and OMB Regulations, please do not hesitate to call.

JOHN W. WITT, City Attorney

By
Cristie C. McGuire
Deputy City Attorney

CCM:jrl:048.4(x043.2)

Attachments

cc Judy Bauer, Acting Director

Intergovernmental Relations (w/att.)

Ed Ryan, City Auditor & Comptroller (w/att.)

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